

REMARKS/ARGUMENTS

Claims 1, 4 and 5 are pending in the application. Claims 1 and 5 are amended to encompass infringing subject matter. Applicants respectfully retain the right to file continuing applications. No new matter is added into the application.

The Rejections Under 35 U.S.C. §102(b)

The Office Action rejects claims 1, 4 and 5 under 35 U.S.C. §102(b) as allegedly being anticipated by **Ref U** (Kim et al., *Antianaphylactic Properties of Eugenol*, 36(6) Pharmacological Research, 475-480 (1997)), **Ref V** (Oita et al., 1985:427328), **Ref W** (Caplus 1991:115063), or **REF X** (Luc et al., WO 93/09770). The Office Action alleges that each of the cited references teaches a pharmaceutical composition containing eugenol that is considered to be within the scope of the claims. Applicants respectfully traverse the rejections to the extent they apply to the presently claimed invention and for at least the following reasons.

The factual determination of lack of novelty under 35 U.S.C. § 102 requires the identical disclosure in a single reference of each element of a claimed invention. *The Kegel Co. v. AMF Bowling*, 127 F.3d 1420, 44 USPQ2d 1123 (Fed. Cir. 1997); *Gechter v. Davidson*, 116 F.3d 1454, 43 USPQ2d 1030 (Fed. Cir. 1997). In rejecting a claim under 35 U.S.C. §102, the PTO is required to identify wherein a particular reference identically discloses each feature of the claimed invention. *In re Rijckaert*, 9 F.3d 1531, 28 USPQ2d 1955 (Fed. Cir. 1993); *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481 (Fed. Cir. 1984). Without acquiescing in the rejections, claim 1 has been amended to reiterate the previously recited selection step whereby the recited "at least one plant essential oil compound" is selected on a basis of therapeutic treatment for cancer. Applicant respectfully

submits that none of the cited references teaches or suggests a pharmaceutical composition comprising a plant essential oil compound that has been selected on a basis of therapeutic treatment for cancer, as presently claimed. This fundamental difference undermines the erroneous factual determination that the cited references describe the claimed invention within the meaning of 35 U.S.C. § 102. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 102(b).

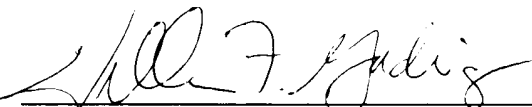
Conclusion

If any issues remain outstanding or if an Examiner's amendment could be made to expedite prosecution, then Applicants respectfully invite the Examiner to contact the undersigned representative at the telephone number listed below.

Please grant any extensions of time deemed necessary for entry of this communication. Please charge any deficient fees, including extension of time fees, or credit any overpayment of fees, to Deposit Account No. **14-1140**.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: 

Willem F. Gadiano
Reg. No. 37,136

WFG:ewm
1100 North Glebe Road, 8th Floor
Arlington, VA 22201-4714
Telephone: (703) 816-4000
Facsimile: (703) 816-4100